IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11122 of 1994

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VASUDEO SURSINGBHAI CHAUHAN

Versus

DEPUTY COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 11122 of 1994

MR YN RAVANI for Petitioner No. 1

Mrs. Manisha L. Shah, AGP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 1,2-4

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 19/10/2004

ORAL JUDGEMENT

1. The petitioner in this writ petition under

Article 226 of the Constitution of India challenges the order of suspension dated 16th September 1994 passed by the respondent No.1, i.e the Deputy Commissioner of Police, Zone-II, Ahmedabad City, on the ground that the said order passed by the Authority is not in accordance with the Rules. Before passing the order of suspension, the Authority has failed to apply his mind to the relevant facts and the First Information Report, which was the basis for passing the order of suspension, where the petitioner had played no role of whatsoever nature. The petitioner has produced on record copies of First Information Report and the order of suspension dated 16th September 1994 at Annexure "B", which recite that, while performing the duty as police constable (unarmed) at Shahpur Police Station, offences punishable under Sections 385, 506(2) of the Indian Penal Code and under Section 3(10) of the Atrocities Act came to be registered against the petitioner.

2. This Court, by order dated 17th June 1995, issued Rule and, by way of interim relief, stayed the order of suspension. However, at the relevant point of time, no affidavit-in-reply was filed and the learned Assistant Government Pleader submitted that this is not a case of moral turpitude. No ground was canvassed to justify the order of suspension, and, for a period of nine years, the order of suspension has remained stayed and the petitioner is, at present, performing his duties. It appears from the record that, during operation of stay of suspension, no other misconduct seems to have been alleged against the petitioner.

3. So far as the pendency of criminal case is concerned, in case any order of punishment or conviction is passed against the petitioner, both the parties are at liberty to take appropriate action in accordance with law. In view of the above, the order of suspension shall remain stayed till the outcome of the criminal proceeding against the petitioner, and, thereafter, for a further period of four weeks in case any adverse order is passed against the petitioner. It will be open to the petitioner to challenge adverse order, if any, in accordance with law. With the above observations, Rule is discharged with no order as to costs.

(Anant S. Dave, J.)
(swamy)